IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 11761 of 1992

Between:

M/s. Rawoof Enterprises, Rep. Mg.Partner- Mohd. Abdul Rawoof.
Off: 18-1-1097/1, Bahadurpura, Hyderabad.

..... PETITIONER

AND

1 The Asst. Commissioner of I.T.,
Cir-2(2), 5th Floor, Aayakar Bhavan,
Basheerbagh, Hyderabad.
2 The Commissioner of Income-tax,
A.P. II, 8th floor, Aayakar Bhavan,
Basheerbagh, Hyderabad.
3 The Commissioner of Income-tax,
(Appeals)-II, 7th Floor, Aayakar Bhavan,
Basheerbagh, Hyderabad.
4 The Central Board of Direct Taxes, Rep. Chairman.
New Delhi.
5 Union of India, Rep. Secretary.
Ministry of Finance, New Delhi.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to it is prayed that an appropriate Writ, Direction or order particularly in the nature of Certiorari may be issued quashing the order of Res-1 bearing No. R-306/AC-2(2) dated 28/03/1989, passed u/s 271(1)(a) of the I.T.Act, 1961, imposing a penalty of Rs. 34,238/- and all consequential relief(s) to which the petitioners may be entitled in

the interest of justice and costs may be awarded.

Counsel for the Petitioner: MR.MAHBOOB MUSTAFA FIRDOS

Counsel for the Respondents: MR.S.R.ASHOK

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P.NO. 11761 OF 1992

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

Heard learned counsel for the parties. This writ petition has been filed challenging an order imposing penalty of Rs.34,238/- on the petitioner for filing income tax returns belatedly. He challenged the order unsuccessfully before the appellate authority including the Tribunal. The Tribunal dismissed the appeal as well as the application seeking condonation of delay while considering an application of stay, although the appeal and the delay condone petition were not before it. In para-15 of the writ affidavit, the petitioner has pointed out that with the dismissal of the appeal by the Income Tax Tribunal as time barred, he has no remedy except to approach this Court. We feel that the order imposing penalty on the petitioner could not be challenged before this Court without challenging the Tribunal's order or without making a request for reference before the Tribunal. But since we have found that the Tribunal has without reasons dismissed the application for condonation of delay while

considering the application of stay, we modify the relief to the extent that we consider the dismissal of the application for condonation of delay by the Tribunal to be wrong. Just reasonable cause was shown by the petitioner that the order had been served on some of the employee of the office who had left the job. This was not at all considered and even the petitioner was not put to notice when the appeal along with the application for condonation of delay was dismissed, as the Tribunal at that point of time was only hearing the stay application pending the appeal.

For these reasons, while maintaining the order imposing penalty, we set aside the order of the Tribunal dismissing the appeal as time barred and direct the Tribunal to consider the appeal on merits. The delay in filing the appeal should be treated to have been condoned by this order. The writ petition is accordingly disposed of. No order as to costs.

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BN J.

_____

SAR J.

Dt. 29.9.2004

KR

Sd/-

ASST.REGISTRAR

//True Copy//

Section Officer

To

1 The Asst. Commissioner of I.T.,
Cir-2(2), 5th Floor, Aayakar Bhavan,
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